

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BETH WILK)	
Claimant)	
VS.)	
)	Docket No. 190,312
TOOMEY, RUSSELL, GREGORY & PILGREEN)	
Respondent)	
AND)	
)	
FARM BUREAU MUTUAL INSURANCE CO.)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from a preliminary hearing Order entered on May 1, 1996, by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is an appeal from an Order issued after a preliminary hearing held in conjunction with an application for review and modification. The hearing, which is the subject of this appeal, was held while the original award was still pending for review by the Appeals Board. After noting that compensability was an issue on appeal to the Appeals Board, the Administrative Law Judge took under advisement the application of preliminary hearing benefits and stayed the proceedings pending a decision on review by the Appeals Board.

Findings of Fact and Conclusions of Law

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the claim should be remanded for further proceedings on claimant's application for preliminary hearing benefits.

The Administrative Law Judge entered an award in this case on December 22, 1995. In that Award she found that claimant sustained a compensable workers compensation injury but further found that the injury was temporary only. Claimant appealed that ruling. While the case was on appeal to the Appeals Board, claimant filed an application for review and modification and an application for preliminary hearing. A hearing was scheduled for April 24, 1996, to consider the issues raised by claimant's application for preliminary hearing. After being advised of the procedural posture and after taking evidence, the Administrative Law Judge concluded that all issues raised at the preliminary hearing should be taken under advisement until the Appeals Board rendered its decision on the appeal from the initial Award.

The Appeals Board finds and concludes that the case should be remanded for further proceedings on the application for preliminary hearing. First, we find nothing in the Act which would indicate that the appeal should stay further proceedings on an application for review and modification or a subsequent application for preliminary hearing. Second, the decision on the underlying appeal was rendered by the Appeals Board and issued on June 21, 1996. The Appeals Board affirmed the decision by the Administrative Law Judge, finding claimant did suffer a compensable injury but further finding that the injury was temporary only. The Administrative Law Judge should, therefore, proceed to consider claimant's application for preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes dated May 1, 1996, should be, and the same is hereby, remanded for consideration and determination of the issues presented by claimant's application for preliminary hearing.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Kim R. Martens, Wichita, KS
Randall C. Henry, Hutchinson, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director